IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.2008 of 2004
Date of Decision:- 10.11.2006

Surjit Kaur & ors. ....Appellants.

through
Mr.Arun Bansal, Advocate

vs.

Tara Singh ....Respondent

through
Mr.H.S.Mattewal, Sr.Advocate
with Mr.H.S.Sidhu, Advocate

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This regular second appeal is preferred by the plaintiffs whose suit for declaration to the effect that they have become owners in possession of the subject property by way of adverse possession, has been dismissed by the learned trial Court vide judgment and decree dated 5.3.2003 which has been further upheld by the learned Additional District Judge, Moga vide his impugned judgment and decree dated 10.2.2004.

It is an admitted fact that the property in dispute is owned by the defendant-respondent Tara Singh. There is no denial to the fact that the possession of the said property was handed over to Phuman Singh father of the plaintiffs (one of whom, namely, Pritam Singh has since died) for running a tea stall. Subsequently, the plaintiffs, namely, sons of Phuman Singh, are stated to have raised construction over the said property and also got installed an electricity connection in their name. The house tax is also stated to have been paid by them. On this premise and alleging that they are in possession of the property since the year 1970-71, the present declaratory

suit was filed.

Both the Courts have concurrently held and rightly so that Phuman Singh was handed over the possession of the property to run a tea stall on account of close relationship between the parties as the said Phuman Singh was a cousin of the defendant-respondent. The possession of Phuman Singh over the subject property was, thus, permissive who never ousted the real owner. No evidence has been led by the appellants to prove that at any point of time they set up their own title over the subject property, hostile to that of the respondent-defendant and to his knowledge. Once the predecessor-in-interest of the appellants had entered into permissive possession, the nature thereof shall be deemed to remain un-altered unless rebutted by leading some strong evidence to the contrary. It also stands proved that neither it was a case of taking the possession by the predecessor-in-interest of the appellants forcibly nor he ever questioned the title of the defendant-respondent.

On the contrary, the close relationship between the two does suggest that deceased Phuman Singh was allowed to enter into possession as a licensee.

The above-stated findings being pure and simple findings of fact, do not give rise to any substantial question of law which may require consideration by this Court. I, thus do not find any merit in this regular second appeal, which is accordingly dismissed.

November 10, 2006 **(SURYA KANT)**
poonam **JUDGE**